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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No. 619

HELEN CALHOUN CASH,

Appellant,

vs.

THE METROPOLITAN TRUST COMPANY, CONSERVATOR, A CORPORATION; PEOPLE OF THE STATE OF ILLINOIS,

Appellees.

APPEAL FROM SUPREME COURT OF ILLINOIS No. 26738.

PETITION FOR REHEARING.

HENRY W. DIERINGER,
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Attorneys for Appellant.

THE BLAKELY-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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PETITION FOR REHEARING.

MAY IT PLEASE THE COURT:

Now comes the Appellant, Helen Calhoun Cash, by her attorneys, Henry W. Dieringer and Warren H. Orr, and respectfully prays for a reconsideration by the Court of its Order of February 14, 1944, dismissing this cause for the want of a properly presented substantial Federal question.

The Appellant and her attorneys have carried this case to the highest court in the land for the sole purpose of preventing a repetition of the injustice done to Mrs. Cash in what was called a court proceeding in Illinois. Every person in Illinois is now in danger of being declared a lunatic in a "star chamber" proceeding just as Mrs. Cash was in this case. From the citations given as precedent for dismissing this cause, it becomes apparent that the Court has overlooked the contention of the Appellant from the

very beginning that no Court was ever in session when she was adjudged insane. The hearing took place in a private institution in the presence of the County Judge, but no Clerk, Bailiff or Sheriff were present; no Court was ever convened; no Court Reporter took down the proceedings; no guardian *ad litem* was appointed; the Appellant was not advised it was a Court proceeding, nor was she given an opportunity to employ counsel or call upon her friends; no opportunity was afforded for a trial by jury, nor was she advised that she was entitled to a jury trial. The Illinois Supreme Court in approving such a procedure had to upset the established law of Illinois, and in effect disregard the statutory provisions made for the protection of a person alleged to be insane. One of the outstanding requirements of the Illinois Statute is that no proceeding can be held away from the courthouse unless an affidavit is filed by someone, stating that the person alleged to be insane is unable to attend the regular session of the Court at the courthouse. No such affidavit was ever filed in this case, and this being a special statutory proceeding, the failure to file such an affidavit is fatal from the jurisdictional standpoint.

The Court's attention is called to the fact that we have consistently attacked the proceeding wherein Mrs. Cash was declared insane on the ground of lack of jurisdiction. This is purely a jurisdictional question and not an insanity matter. Due process of law, besides requiring notice and an opportunity to defend also requires that the case be tried before a judicial tribunal, see *Pennoyer* v. *Neff*, 95 U. S. 714 and *Powell* v. *Alabama*, 287 U. S. 45. This Court has never permitted the arbitrary and capricious exercise of power by persons whether they be Judges or otherwise when the Civil or Criminal rights of a person are encroached upon, see *American Railway Express Company* v. *Kentucky*, 273 U. S. 259, and *Booth* v. *Illinois*, 184 U. S.

425. We earnestly contend that if the present opinion of the Supreme Court of Illinois is permitted to stand, it will open the door for a vicious practice by making it a simple matter to "railroad" a person to an institution for mental patients. The effect of an order finding a person to be insane is to deprive him of his liberty for an indefinite period, and upon the strength of that order a conservator may be appointed, thereby depriving him of all his property. The worst criminal never finds himself in such a situation, the courts always protecting the defendant's rights.

In allowing the motion to dismiss this cause, this Court cited *Simons* v. *Craft*, 182 U. S. 427, 434-5. That case came up from Alabama, and was an attack upon a lunacy proceeding. Mrs. Simon, the incompetent, did not raise the question as to whether or not a Court had ever convened to hear her case; she had a guardian *ad litem* appointed, who filed an answer on her behalf; she was served a regular summons, issued out of a regular court; she did not allege that she was denied an opportunity to employ counsel, and she had a jury trial in a court convened in a courthouse. All of these facts are directly opposite to the case at bar. An examination of the pleadings in the case at bar will show that Mrs. Cash properly pleaded these points.

The Court also cites *Chalonery* v. *Sherman*, 242 U. S. 455, 459-60, as authority for granting the motion to dismiss. That case came up from New York and was a collateral attack by an adjudged incompetent person upon the order finding him incompetent. The defendant had notices of several motions served upon him personally, and made no effort to defend. He never questioned the jurisdiction of the court as to whether or not a court was actually in session, as in the case at bar. On page 462, this Court says:

> "If it be true that the orders ought to be set aside because they were, as alleged, entered corruptly, irregu-

larly or inadvertently, or because owing to a change in plaintiff's condition a committee is no longer required, the remedy must be sought by a direct proceeding to that end. No evidence was introduced to prove that even an attempt was made to vacate or modify the orders. In this action of Trover, which seeks merely damages for alleged wrongful withholding of plaintiff's property, the existing orders constitute a complete defense. The evidence offered was properly excluded and there was no error in directing verdict for the defendant."

This whole case turned on the fact that it was a collateral attack, whereas in the case at bar, the attack by Mrs. Cash was a direct proceeding.

The Court also cited *Milk Wagon Driver's Union* v. *Meadowmoor Company*, 312 U. S. 287, 294, which came up from Illinois, and was a case involving an injunction against picketing by a Labor Union. The page referred to contains a discussion by this Court as to when it will or will not reject a determination by a State Supreme Court, saying, "We can reject such a determination only if we can say that it is so without warrant as to be a palpable evasion of the constitutional guarantee here invoked." The Court goes on to say that no doubt Illinois can protect its people from violence. We agree with everything the Court says but maintain that the failure of the Illinois Supreme Court to follow the statute laid down by the people of the State of Illinois in the case at bar, is such a palpable evasion of the constitutional guarantee that every person is supposed to have, it is necessary that this Court interfere with such a decision and reject it for the protection of every person in Illinois.

The fourth case cited by this Court as authority for dismissing the case at bar is *Milwaukee Elevated Railway* v. *Milwaukee*, 252 U. S. 100, 106, which came up from Wisconsin and was a case concerning a street paving contract.

The reference to page 106 pertains to uniformity of decisions and states that the 14th amendment does not guarantee uniformity of decisions. That holding can be readily understood, and we have no quarrel with it, however when a Supreme Court or a Court of last resort holds other than it formerly did on the same question thus upsetting the established law and disregarding the doctrine of *stare decisis* the Court usually gives a reason for overruling the established law. In the case at bar, the Illinois Supreme Court upset a long line of decisions without giving any reasons, or even stating that they were overruled.

The Appellant urges that the cases cited by this Court as authority for dismissing this cause are not in point for the reasons pointed out above, and because of such reasons, and the importance and far-reaching effect of the Illinois Supreme Court's opinion (the importance of which is further proven by the fact that the Illinois Supreme Court first ruled unanimously for the Appellant herein, and two terms later reversed itself upon a petition for rehearing, Justice Smith dissenting at length), this Court is earnestly petitioned to give reconsideration to the decision in the above cause.

Respectfully submitted,

HENRY W. DIERINGER,
WARREN H. ORR,
Attorneys for Appellant.

CERTIFICATE.

I, HENRY W. DIERINGER, one of the attorneys for Appellant, hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

HENRY W. DIERINGER,
Attorney for Appellant.

Dated: March 4th, 1944.